IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3610 OF 2004

Bibhishan Uttam Parade ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. M.K. Kochanekar with Mr. Anand Y. Dhongade, for the Applicant.

Mr. V.B. Konde Deshmukh, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

7th October 2004

P.C.:

. Heard Counsel for the parties. I find no reason to depart from the view taken by the Court below in rejecting the bail application. For the same reasons, I am inclined to dismiss the present application. However, Counsel for the Applicant submits that the presence of eye witnesses itself is doubtful from the circumstances, which can be culled out from the

record. It is not possible to accept this submission. It is too early to take that view. That is matter of evidence.

. The Counsel then submits that there is delay in lodging of F.I.R. If it is so, the Applicant is entitled for benefit for which reason he deserves to be enlarged on bail. Even this submission does not commend to me. At this stage, it is not possible to take the view that the Applicant was not involved in the commission of offence. To my mind, there is overwhelming material on record to implicate the Applicant in the alleged offences. His role has been ascribed by the witnesses. Merely because there is some delay in filing of F.I.R., that by itself cannot be ground for enlarging him on bail.

. It is then contended that there was previous enmity between the parties and obviously there is a tendency to falsely implicate as many number of persons from the other group. Needless to observe that plea of previous enmity is a doublt-edged weapon. Just as there is possibility of falsely implicating innocent persons, similarly it is possible to take the

view that because of the previous enmity, the Applicant was invovled in the commission of offence and that can be motive for the commission of offence. In the circumstances, even this submission does not commend to me.

. It is next contended that the possibility of false implication of as many accused can be discerned from the fact that even one of the accused, who was undergoing treatment in the hospital at the relevant time, has been named in the commission of offence. However, that accused has been enlarged on anticipatory bail by this Court vide order dated 13th January 2004. On fair reading of the said order, it is seen that the Court has, prima facie, accepted the version of the said accused that at the relevant time, he was hospitalised. Merely because he was falsely implicated does not mean that each of the accused, much less the present Applicant, has been falsely implicated. All the prosecution witnesses in their statements have named the Applicant and attributed positive role to the Applicant.

. It was next contended that the medical

evidence will neither support the case propounded by the complainant or the prosecution witnesses. The medical evidence does indicate multiple injuries all over the body of the deceased. Moreover, it is seen that similar argument was considered by this Court in case of another accused and rejected by order dated 31st August 2004 in Criminal Application No. 3639 of 2004. I am in agreement with the said reasoning adopted by my brother Judge (Bhosale, J.)

. It was further contended that it is improbable that 8 accused persons have assaulted the injured eye-witnesses, as is the case of the prosecution. Once again, this submission overlooks the multiple injuries found on the person of the deceased and the positive role as has been attributed to the present Applicant. This by itself is a ground for rejecting the present bail application.

. Accordingly,this application deserves to be rejected and is hereby dismissed.

. Although this application is rejected, the appropriate course, to my mind, is to direct

the trial Court to expedite the hearing of the trial. The trial be disposed of as early as possible preferably within one year from today.